

Section: Eligibility

Topic: Eligibility Determination

Question 6-01: Are the eligibility criteria less stringent at re-evaluation, when determining continuing eligibility, as at initial evaluation?

Answer 6-01: No. The purpose of eligibility determination is the same for initial and continuing eligibility determination. That purpose is to determine whether the child is “a child with a disability” and eligible for special education and related services (8 VAC 20-80-56 A, B).

Question 6A-01: Is an eligibility report required for re-evaluation?

Answer 6A-01: Yes. “The local educational agency shall provide a copy of the documentation of the determination of eligibility to the parent or parents” (8 VAC 20-80-56 C 5). Since the purpose of re-evaluation is to determine continuing eligibility (“whether the child continues to have a particular disability or has any additional disabilities” and “whether the child continues to need special education and related services” (8 VAC 20-80-54 F 2 b), an eligibility report is required. The eligibility report is a separate report from the evaluation report.

Question 6B-01: Can a child with a disability be found no longer eligible due to lack of motivation or lack of progress?

Answer 6B-01: A child is only found not eligible if the child is no longer deemed a “child with a disability” and in need of special education and related services (see # -01). If the child meets those criteria, the team cannot find the child to be no longer eligible.

The lack of progress or lack of motivation would be issues for the IEP team. The child’s IEP team shall review the IEP “to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address: Any lack of expected progress toward the annual goals and in the general curriculum” (8 VAC 20-80-62 B 6). Additionally, a lack of progress or motivation may be reviewed as a behavioral issue impeding the student’s learning. In that case, the IEP team should review, as appropriate, strategies, including positive behavioral intervention strategies and support, to address the behavior (8 VAC 20-80-62 E 2 a)

Preferred Practice - If a child with a disability is no longer progressing, the IEP team may consider whether services to meet the goals can be provided in the classroom. (This is particularly effective if special education and/or related services has been provided in that classroom in collaboration with the classroom teacher.) Other options include making sure all appropriate and modifications are being provided in the classroom and involving the child in the IEP meeting to assist the child in taking ownership for his/her own progress.

Question 6C-01: What should a parent do if he or she disagrees with the eligibility decision?

Answer 6C-01: “The group making the decision regarding the child’s eligibility shall work toward consensus” (8 VAC 20-80-56 C 4). The eligibility determination cannot be reached without parental consent. “The local educational agency shall obtain parental consent for the initial eligibility determination. Thereafter, parental consent shall be secured for any change in identification” (8 VAC 20-80-56 C 4).

If the group does not reach consensus and the eligibility “report does not reflect a particular member’s conclusion, then the group member must submit a separate statement presenting that member’s conclusion” (8 VAC 20-80-56 C 6). As this applies to all group members, including parents, the parent or parents would provide a statement indicating their conclusion.

Local educational agency personnel and the parent or parents should continue to discuss the reasons for their disagreement to determine if consensus can be reached. Mediation is a valuable tool for resolving such disagreements. If, however, the parent does not come to consensus with the rest of the team and consent to eligibility, there would be no change in the child’s status as a result of the eligibility meeting. Parents should be provided with prior written notice of the refusal to adopt the parents’ position and given a copy of the procedural safeguards to ensure that parents know of their right to request a due process hearing.

If the disagreement is regarding a disability category that was identified previously (i.e., the parent or school wishes to change the category), the category would not change. The exception is the category developmental delay, as this category cannot be used for children older than age 8 (8 VAC 20-80-10). If, however, the school division chose only to use this definition for preschool-aged children through age 5, the category could not be used for school-aged children of any age. For a child identified with a developmental delay and “aging out” of that category, the child would be identified as a “child with a disability” until the parents consent to a change in disability category or the parents consent to termination of services.

Question 6D-01: What do you do with a child with limited English proficiency who appears to have a specific learning disability (or other disability)?

Answer 6D-01: The regulations state that a child shall not be found to be eligible if the determining factor is limited English proficiency (8 VAC 20-80-56 C 3). The evaluation of the child would need to differentiate between academic and communication skills that are related to the limited English proficiency and those related to a specific learning disability (or other disability). If the eligibility team determined that the child is a child with a disability in need of special education and related services, in addition to having limited English proficiency, the team would then determine if the child is eligible based on whether the child needs special education and related services.

Preferred Practice - The eligibility committee may wish to work closely with English as a Second Language specialists to differentiate between a disability and limited English proficiency.